

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEVIN J. JOHNSON,

Petitioner,

v.

ORDER
07-CV-269S

SUPERINTENDENT GRAHAM,

Respondent.

1. On April 23, 2007, Petitioner's action seeking federal habeas relief under 28 U.S.C. § 2254 was transferred to this Court from the Northern District of New York.

2. On September 22, 2008, this Court referred this matter to the Honorable Hugh B. Scott, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation filed on August 11, 2009, Judge Scott recommended that Petitioner's Petition for a Writ of Habeas Corpus be denied in its entirety. On August 26, 2009, Petitioner filed timely Objections to Judge Scott's Report and Recommendation, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has thoroughly reviewed Judge Scott's Report and Recommendation, Petitioner's Objections thereto and the applicable law. Upon due consideration, this Court finds no legal or factual error in Judge Scott's Report and

Recommendation. Accordingly, Petitioner's Objections are denied and this Court will accept the Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's August 11, 2009 Report and Recommendation (Docket No. 21) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Objections (Docket No. 22) are DENIED.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 20) is DENIED.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: September 28, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge